

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

CLERK'S INSTRUCTIONS FOR APPEALS

1. Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely motion of a type specified in Rule 8002(b) whichever is later, (or entry of an order by the District Court granting leave to appeal) the appellant shall file with the clerk of the bankruptcy court a designation of the items to be included in the record on appeal and a statement of issues to be presented (Bankruptcy Rule 8006). **Failure to timely file this designation may result in dismissal of the appeal pursuant to Local Rule 8006-1(A) and Local Rule 87.4 (B), United States District Court, Southern District of Florida.** The designation shall include the title and court paper number of each paper designated.
2. Within 10 days after the service of the designation and the statement of issues of the appellant the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal, and if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of issues to be presented on the cross appeal, and a designation of additional items to be included in the record. The appellee's designation shall include the title and court paper number of each additional item designated.
3. Each party shall supply the court with copies of every item designated, including transcripts, within 15 days of the time the designation is filed with the clerk [see Bankruptcy Rule 8006 and Local Rule 8006-1(B)]. Copies shall be made from the original court documents so that they will bear file dates, court paper numbers, and signatures. Copies may be ordered from the court's licensed copier service. Copies can also be ordered from the clerk's office at a cost of \$.50 per page. Payment is required in advance. **Failure to furnish copies of the designated record within 15 days from the filing of your designation may result in dismissal of your appeal pursuant to Local Rule 8006-1(A) and Local Rule 87.4 (B), United States District Court, Southern District of Florida.**
4. If any transcripts of untranscribed proceedings are designated by a party, that party shall immediately, upon the filing of the designation, order the transcript(s) from the court reporter and make satisfactory arrangements for payment of its costs. All transcript orders must be made on the Local Form "Appeal Information Sheet" enclosed for this purpose, and a copy filed with the clerk (Bankruptcy Rule 8006). On receipt of a request for a transcript, the reporter shall complete the Reporter's Acknowledgment and file a copy with the clerk (Bankruptcy Rule 8007).
- 5. Motions For Leave To Appeal (Bankruptcy Rule 8003):** The clerk will transmit the motion, notice of appeal and any answer thereto to the clerk of the district court as soon as all parties have filed answers or the time for filing an answer has expired. The designation, statement of the issues and copies of the items designated should not be filed with the clerk of the bankruptcy court as required under Bankruptcy Rule 8006, until entry of an order by the district court granting leave to appeal pursuant to Local Rule 8003-1(B).

The following U.S. Bankruptcy Court, SDFL Local Rules pertaining to appeals have been reproduced to assist you in preparing your appeal.

Rule 8001-1. Notice of Appeal.

L Advisory Committee Note - 1998 Amendments: Former Local Rule 801 has been split into Local Rules 8001-1 and 8011-4 in accordance with the mandatory renumbering system.

(A) Required Content and Fee. A notice of appeal shall contain the title and date of the order being appealed and shall be accompanied by a copy of the order being appealed and the prescribed fee. A separate notice of appeal and filing fee is required for each order being appealed other than appeals of an order and subsequent orders entered relating to the underlying order or judgment. If the prescribed fee does not accompany the notice of appeal, the appeal shall be dismissed by this court as authorized by District Court Local Rule 87.4(B).

L Advisory Committee Note - 1998 Amendments: Added requirement to (A) that copy of order being appealed be filed with notice of appeal to expedite processing by clerk's office by clarifying which order is being appealed.

(B) Copies and Envelopes Required. Each appellant shall file a sufficient number of copies of the notice of appeal and adequate size self-addressed, stamped envelopes to enable the clerk to serve the notice required by Bankruptcy Rule 8004.

Rule 8002-1. Time for Filing Notice of Appeal.

(A) Dismissal of Untimely Appeal. A notice of appeal filed after the time period specified in Bankruptcy Rule 8002 will be dismissed by this court as authorized by District Court Local Rule 87.4(B).

(B) Premature Appeal. If a notice of appeal is filed after the announcement of a ruling by the court but before entry on the docket of the written judgment, order, or decree, the notice will be docketed but not served in accordance with Bankruptcy Rule 8004. Once the judgment is entered on the docket, the notice of appeal will be served by the clerk, noting the date the judgment was entered on the docket as the filing date of the notice of appeal.

Rule 8003-1. Motions for Leave to Appeal.

(A) Fee Required. A motion for leave to appeal shall be accompanied by the prescribed filing fee. A motion for leave to appeal not accompanied by the fee shall be dismissed by this court as authorized by District Court Local Rule 87.4(B).

(B) No Designation Required Until Leave to Appeal Docketed. The filing deadlines set

forth in Bankruptcy Rule 8006 shall not begin until the district court order granting the motion is docketed in the bankruptcy court. Within 5 business days from the entry of the district court order granting a motion for leave to appeal, the appellant shall pay the prescribed appellate docketing fee to the clerk of the bankruptcy court.

[Comment: See "Clerk's Instructions for Appeals".]

Rule 8005-1. Motions for Stay. *Motions for stay which request relief from the District Court must be filed directly with the District Court in accordance with District Court Local Rule 87.4(C). If a stay has been granted by the district court it shall be incumbent upon the movant to immediately file a copy of the district court ruling with the clerk of the bankruptcy court.*

[Comment: See Local Rule 7069-1(F). (Writs shall issue absent entry of an order granting stay of execution).]

Rule 8006-1. Record and Issues on Appeal.

(A) Dismissal for Failure to File Designation of Record or Statement of Issues. *If the appellant fails to file a designation of record or statement of the issues as required by Bankruptcy Rule 8006, this court shall dismiss the appeal as authorized by District Court Local Rule 87.4(B).*

(B) Form of Designation; Preparation of Record. *The designation shall include the titles and court paper numbers of the papers designated. The designating party shall submit, within 15 days of filing of the designation, a copy obtained directly from official court records of every item designated, including transcripts, as provided in Bankruptcy Rule 8006, except designated transcripts of untranscribed proceedings, as to which the procedure provided in Local Rule 5011-1(B)(4) shall apply. Failure to submit official court copies of the designated record shall be treated as a failure to file the designation and this court shall dismiss the appeal as authorized by District Court Local Rule 87.4(B).*

(C) Ordering Transcripts. *The Local Form "Appeal Information Sheet" provided by the clerk shall be used to order any untranscribed portion of the record.*

[Comment: See "Clerk's Instructions for Appeals".]

Rule 8011-3. Determination of Motion - Appeal. *A motion to dismiss or other request for intermediate relief as contemplated under Bankruptcy Rule 8007(C), shall be filed directly with the district court in accordance with District Court Local Rule 87.4(C).*

Rule 8011-4. Emergency Motion - Appeal; Request to Expedite Appeal. *Bankruptcy appeals requiring expeditious treatment by the district court shall be brought to the attention of the clerk of the bankruptcy court by filing the Local Form "Request to Expedite Appeal" at any time prior to transmittal of the record. This request shall be brought to the attention of the clerk of the district court by the clerk of the bankruptcy court upon transmittal of the record on appeal.*

L *Advisory Committee Note - 1998 Amendments: Former Local Rule 801 split into 8001-1 and 8011-4 in accordance with the mandatory renumbering system.*

Rule 8014-1. Taxation of Appellate Costs by Clerk; Motion for Fees and Costs.

(A) Authority to Tax Costs. *The clerk shall only tax those costs as permitted by Bankruptcy Rule 8014 and the court's "Guidelines for Taxation of Costs".*

(B) Bill of Costs. *A party eligible for costs shall submit a bill substantially conforming to the Local Form "Bill of Costs", accompanied by self-addressed stamped envelopes for all interested parties. A copy of the bill of costs shall be served by the requesting party on all interested parties. The clerk may require the submission of supporting documentation prior to determination of the bill of costs.*

(C) Deadline for Filing. *The bill of costs shall be filed not later than 30 days after entry of the judgment or order of the district court.*

(D) Notice to Parties of Costs Taxed by Clerk. *The clerk shall review the bill of costs and enter the amount of costs allowed on the bill. A copy of the bill of costs with the clerk's determination shall be served by the clerk on all interested parties.*

(E) Objection to Taxation of Costs by Clerk. *On a motion served within 5 days after entry of the bill of costs, the action of the clerk shall be reviewed by the court.*

(F) Motion for Fees and Costs Not Taxable by Clerk. *Fees and costs which the clerk is not authorized to tax pursuant to subdivision (A) shall be considered only upon motion to the court filed within 30 days after entry of the judgment or order.*

[Comment: See also Bankruptcy Rule 7054 and Local Rule 7054-1 (taxation of costs in adversary proceeding) and 28 U.S.C. §§ 1920 - 1924.]

The following U.S. District Court, SDFL Local Rules pertaining to appeals have been reproduced to assist you in preparing your appeal.

Note: The local bankruptcy rule references contained in these district court rules do not reflect the changes in rule numbering affected by the amendments to the local bankruptcy rules effective 12/1/98. A footnote after each affected cite indicates the updated number for the local bankruptcy rule cited.

RULE 87.1 AUTHORITY OF BANKRUPTCY JUDGES TO MAKE LOCAL RULES

The bankruptcy judges of the United States Bankruptcy Court in this district may, by action of a majority of the bankruptcy judges, make local rules of practice and procedure to govern all cases, proceedings and other matters in the bankruptcy court.

Comments

(1993; minor stylistic revisions 1996) Rule 9029 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P.") provides that the District Court may promulgate local rules governing bankruptcy practice, or may authorize the bankruptcy judges to promulgate such rules. Rule 9029 does not suggest that such a delegation of authority to the bankruptcy judges requires a local District Court rule, but might assist readers of the District Court local rules if this rule were included. At the least, a general order signed by a majority of the District Court judges is necessary.

The recognized limitations on the scope of local bankruptcy court rules, and the procedural mechanism for promulgating those rules, need not be repeated in this rule or order. They are provided in Rule 9029, Fed.R.Bankr.P., adopting Rule 83, Fed.R.Civ.P.

The one area of bankruptcy practice which is governed throughout the country by local rule is bankruptcy appellate procedure, as to which district court local rules are authorized by Rule 8018, Fed.R.Bankr.P.

RULE 87.2 REFERENCE OF BANKRUPTCY MATTERS

Pursuant to 28 U.S.C. § 157(a) and the General Order of Reference entered July 11, 1984, all cases arising under Title 11 of the United States Code, and proceedings arising in or related to cases under Title 11, United States Code, have been referred to the bankruptcy judges for this district and shall be commenced in the bankruptcy court pursuant to the local bankruptcy rules. The General Order of Reference also applies to notices of removal pursuant to 28 U.S.C. § 1452 (a) which shall be filed with the clerk of the bankruptcy court for the

division of the district where such civil action is pending. The removed claim or cause of action shall be assigned as an adversary proceeding in the bankruptcy court.

Comments

(1996) This new rule codifies the General Order of Reference, and explains the filing procedure for referred cases.

RULE 87.3 MOTIONS FOR WITHDRAWAL OF REFERENCE OF CASE OR PROCEEDING FROM THE BANKRUPTCY COURT

A motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) shall be filed with the clerk of the bankruptcy court in accordance with the requirements of local bankruptcy rule 511¹. Subsequently filed motions for withdrawal of reference in the same case or proceeding shall be regarded as similar actions and proceedings under Rule 3.9 and the attorneys of record shall notify the District Court of all such pending actions and proceedings in compliance with Rule 3.9.D. and, if applicable, provide the notice required by Rule 7.1.F.

Upon disposition of a motion for withdrawal of reference the District Court Clerk shall transmit a copy of the order to the clerk of the bankruptcy court.

Comments

(1996) This new rule specifies the proper court for filing motions for withdrawal of reference. By stating all motions to withdraw reference in the same case or proceeding are "similar" and, therefore, require the parties to comply with Rule 3.9.D, the District Court can consolidate these related motions to eliminate the possibility of conflicting orders from different judges addressing the same issue. The second paragraph has been added because it is critical that the bankruptcy court be promptly advised of whether the reference has been withdrawn in whole or in part, since adversary proceedings and cases are not stayed by the filing of a motion to withdraw the reference.

RULE 87.4 BANKRUPTCY APPEALS

Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy Procedure, particularly Rules 8001 through 8019, and the local rules of the bankruptcy court. As is authorized by Rule 8018, those rules are supplemented as follows:

A. Assignment. Appeals from orders or judgments entered by the bankruptcy court shall generally be assigned in accordance with Rule 3.4. Appeals from orders in a bankruptcy case or proceeding in which appeals have been taken from prior orders in the same case or proceeding shall be regarded as similar actions and proceedings under Rule 3.9 and it will be the continuing obligation of the District Court Clerk and the attorneys of record to comply with Rule 3.9.D.

B. Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court. The bankruptcy court is authorized and

¹ Local Bankruptcy Rule 511 has been renumbered to 5011-1.

directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Rule 8002, Fed.R.Bankr.P.; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Rule 8006, Fed.R.Bankr.P. and local bankruptcy rule 806². The bankruptcy court is further authorized and directed to hear, under Rule 9006(b), Fed.R.Bankr.P., motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within 10 days after entry of the order sought to be reviewed pursuant to subsection C of this rule.

C. Motions for Stay and Other Intermediate Requests for Relief. Motions for stay pending appeal pursuant to Rule 8005, Fed.R.Bankr.P., motions to review bankruptcy court orders entered under Rule 9006(b), Fed.R.Bankr.P., and other motions requesting intermediate relief as set forth in Bankruptcy Rule 8007(c), shall be accepted for filing in the District Court and shall be assigned a miscellaneous memo case number which will apply only to the motion. No filing fee shall be charged in the District Court. The District Court Clerk shall immediately notify the clerk of the bankruptcy court of the assigned case number and judge. When the record on appeal is transmitted it will be assigned a new case number but will be assigned to the same judge who considered the motion. The movant shall provide copies of any relevant portions of the bankruptcy court record necessary for the District Court to rule on the motion. It shall be the duty of the District Court Clerk to immediately transmit a copy of the order ruling on said motion to the clerk of the bankruptcy court.

Rule 7.1 shall apply to motions for stay and other motions seeking intermediate appellate relief from this Court.

D. Motions for Leave to Appeal. A motion for leave to appeal shall be filed in the bankruptcy court pursuant to local bankruptcy rule 803³. Upon transmittal of the motion and related documents to the District Court the matter shall be assigned in the same manner as other miscellaneous motions described in subsection C above.

Upon disposition of the motion, the District Court Clerk shall immediately transmit a copy of the District Court order to the clerk of the bankruptcy court. If the motion is granted the clerk of the bankruptcy court will proceed to prepare and transmit the record on appeal. A new District Court case number will be assigned to the appeal but it will be assigned to the same judge who granted the motion for leave to appeal.

E. Briefs.

1. Briefing Schedule. The briefing schedule specified by Rule 8009, Fed.R.Bankr.P. may be altered only by order of the District Court. If the Clerk of the District Court does not receive appellant's brief within the time

² Local Bankruptcy Rule 806 has been renumbered to 8006-1.

³ Local Bankruptcy Rule 803 has been renumbered to 8003-1.

specified by Rule 8009, Fed.R.Bankr.P., and there is no motion for extension of time pending, the Clerk shall furnish to the judge to whom the appeal is assigned a proposed order for dismissal of the appeal.

2. Length of Briefs. Absent prior permission from this Court, the Appellant's initial or principal briefs and the Appellee's response or principal brief shall not exceed 25 pages in length, and Appellant's reply briefs, if any, shall not exceed 15 pages.

F. Oral Argument. Any party requesting oral argument shall make the request within the body of the principal or reply brief, not by separate motion. The setting of oral argument is within the discretion of the District Court.

G. Judgment. Upon receipt of the District Court's opinion, the District Court Clerk shall enter judgment in accordance with Rule 8016(a), Fed.R.Bankr.P. and in accordance with Rule 8016(b), Fed.R.Bankr.P., shall immediately transmit to each party and to the clerk of the bankruptcy court a notice of entry together with a copy of the District Court's opinion.

H. Appeal. If an appeal remains pending three months after its entry on the District Court docket, the Clerk of the District Court shall advise the Judge of the status of the appeal.

I. Notice. The bankruptcy court clerk is directed to enclose a copy of this rule with the notice of appeal provided to each party in accordance with Rule 8004, Fed.R.Bankr.P. Failure to receive such a copy will not excuse compliance with all provisions of this rule.

J. Court Discretion. This rule is not intended to exhaust or restrict the District Court's discretion as to any aspect of any appeal.

Authority

Former Local Rule 27; (1996) renumbered from 87.2 (1993).

Comments

(1996)A. This revision clarifies the procedure for assignment of appeals from subsequent orders in a bankruptcy case or proceeding in which there have been appeals of prior orders. The appeals of subsequent orders will be randomly assigned but treated as "similar actions" under Rule 3.9.C and 3.9.D.

B. This rule has been amended to expand the bankruptcy court's authority to dismiss an appeal for the appellant's failure to pay the filing fee required for a notice of appeal and failure to provide copies of every item designated as required by Rule 8006, Fed.R.Bankr.P. It also clarifies the means for review of orders entered under Rule 9006(b), Fed.R.Bankr.P., by referencing new subsection C below.

C. This procedure provides a means for litigants to request intermediate relief from the District Court after the notice of appeal has been filed but before the record on appeal is transmitted to the District Court. It also clarifies that no fee will be charged in the District Court for these intermediate requests for relief.

This rule further provides for the subsequent assignment of the appeal to the same judge. This should conserve judicial resources since, for example, the disposition of a motion for stay pending appeal will usually require the judge to become familiar with the issues on appeal.

D. Adds reference to the local bankruptcy rule for filing motions for leave to appeal, provides for assignment in the District Court and clarifies that a new case number will be assigned for the appeal.

This rule further provides for the subsequent assignment of the appeal to the same judge. This should conserve judicial resources since the disposition of a motion for leave to appeal will usually require the judge to become familiar with the issues on appeal.

E. Replaces old 87.2.C. Rule 8010(c), Fed.R.Bankr.P., provides authority to the District Court to specify different page limits for briefs. This rule supersedes the page limit specified in Rule 8010, Fed.R.Bankr.P. This rule also distinguishes the page limitations for bankruptcy appellate briefs from memoranda of law as provided in Rule 7.1.C.2.

Also, minor stylistic revisions to entire rule.